



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,554	06/25/2003	Robert Maleeny	634223605005	5485

28104 7590 12/13/2004

JONES DAY  
77 WEST WACKER  
CHICAGO, IL 60601-1692

EXAMINER
----------

LAWRENCE JR, FRANK M

ART UNIT	PAPER NUMBER
----------	--------------

1724

DATE MAILED: 12/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/603,554	Applicant(s) MALEENY ET AL.	
	Examiner Frank M. Lawrence	Art Unit 1724	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-15, 17-23, 25, 26 and 28-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-15, 17-23, 25, 26 and 28-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Specification*

1. The disclosure is objected to because of the following informalities: The first paragraph should be amended to include the current status of the parent application as "now abandoned." A period "." should be inserted at the end of claim 31 so that it forms a complete sentence. In line 4 of claim 34, "hydorgenated" should be changed to "hydrogenated" and "stynene" should be changed to "styrene."

Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 31 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 31 recites the limitation "the co-solvent" in line 1. There is insufficient antecedent basis for this limitation in the claim. Claim 31 should depend from claim 30 rather than 23 to overcome this rejection. This is assumed for examination.

### *Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 1724

6. Claims 1, 2, 6-12, 14 and 17-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Vick et al. (5,698,166).

7. Vick et al. '166 teach a system for filtering and scenting air in forced-air HVAC unit (col. 2, lines 18-39), comprising installing an air permeable filter in the unit, applying a scented thermoplastic (hot melt), semi-permeable polymeric gel composition to the face of a permeable substrate medium (11) on the filter and scenting the air flowing through the filter with volatile components from the gel. The gel composition contains 20-80% by weight of fragrance material and 20-80% by weight of a polymer gelling agent in an ethyl alcohol solvent. The fragrant material evaporates from and near the surface of the gel material, indicating that the material is semi-permeable, allowing fragrant material to evaporate and escape from near the surface but not far from the surface (see col. 5, lines 9-15). The fragrance can remain effective for a four-week period (see col. 8, lines 10-18) and has a viscosity in the range of 5600 cp at less than 250 degrees F (see col. 6, lines 24-29). The "forced air" heating and cooling system will inherently contain a mechanical source of circulating ambient air. The formulation can be a hot melt adhesive that will be capable of being attached to the surface of a common HVAC particle filter. The hot melt adhesive does not melt at below 150 degrees F and sets rapidly within a 5 degrees F reduction in temperature from the melting temperature, which would inherently prevent runoff at the claimed temperature range of 40-150 F (col. 6, lines 6-19).

8. Claim 34 is rejected under 35 U.S.C. 102(b) as being anticipated by Angelone, Jr. et al. (5,587,153).

9. Angelone, Jr. et al. '153 teach a gel antiperspirant formulation that can comprise 9.7% dimethicone and about 8% fragrance by weight with a viscosity of about 160,000 cps at 24° C

(col. 5, lines 4-57). The fragrant gel will be capable of being used in the manner intended by applicant because it has the same physical properties and components.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 13, 23, 25 and 28-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vick et al. '166 in view of Taylor (4,257,787).

12. Vick et al. '166 disclose all of the limitations of the claims except that the gel composition is attached to the downstream facing surface of the filter medium so air contacts the gel after it has passed through the filter medium. Taylor '787 discloses a filter for use in an air distribution system having an odorant dispensing device located on the exit side of the filter (col. 1, lines 12-19; col. 2, lines 8-14; figures). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the filter of Vick et al. '166 by locating the scenting device on the downstream side in order to reduce dust fouling of the surface of the scenting material.

13. Claims 3, 5, 15, 26 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vick et al. '166 in view of Taylor '787 as applied to claims 1, 12 and 23 above, and further in view of Van Breen et al. (3,994,439).

14. Vick et al. '166 in view of Taylor '787 disclose all of the limitations of the claims except that the polymeric gelling agent is hydrogenated styrene/isoprene copolymers, volatile silicones,

Art Unit: 1724

or polyacrylic acids. Van Breen et al. '439 disclose a slow release polymer gel air freshener that can include polystyrene-polyisoprene-polystyrene copolymer (col. 1, lines 19-36; col. 2, lines 47-59). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the composition of Vick et al. '166 by using a styrene/isoprene copolymer in order to provide a carrier that can release a sufficiently high concentration of fragrance to control odor in a room while having a slow release and compactness.

### *Conclusion*

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The additional references listed on the PTO-892 form disclose fragrant gel compositions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank M. Lawrence whose telephone number is 571-272-1161. The examiner can normally be reached on Mon-Thurs 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on 571-272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/603,554  
Art Unit: 1724

Page 6

Frank M. Lawrence  
Primary Examiner  
Art Unit 1724

fl

*Frank Lawrence*

*10-21-04*